UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN RED CROSS BLOOD SERVICES, WESTERN LAKE ERIE REGION,

Respondent,

Case No. 08-CA-090132

and

THE UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 75,

Charging Party.

ANSWERING BRIEF OF RESPONDENT, AMERICAN RED CROSS
BLOOD SERVICES, WESTERN LAKE ERIE REGION,
IN RESPONSE TO THE EXCEPTIONS OF
COUNSEL FOR THE ACTING GENERAL COUNSEL TO THE DECISION OF
ADMINISTRATIVE LAW JUDGE MARK CARISSIMI

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Pursuant to Section 102.46(d) of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), Respondent American Red Cross Blood Services, Western Lake Erie Region ("Region") files the following Answering Brief in response to Counsel for the Acting General Counsel's ("CAGC") Exceptions and Brief in Support of Exceptions dated August 2, 2013 ("CAGC's Brief").

I. INTRODUCTION

In this case, the Acting General Counsel ("AGC") of the NLRB issued a consolidated complaint, alleging in part that the Region violated the National Labor Relations Act ("NLRA" or "the Act") by maintaining a number of employment policies which it was claimed "on their face establish violations" of the Act. On June 4, 2013, Administrative Law Judge Mark Carissimi (the "ALJ") issued his Decision¹ concluding that many of the policies at issue did not violate the Act, including, in relevant part, (i) provisions in the Region's Employee Handbook and Code of Conduct² dealing with conflicts of interest or unsatisfactory conduct and (ii) provisions regarding the use of the American Red Cross ("ARC") name or emblem set forth in the Employee Handbook and code of conduct. The CAGC's Brief attempts to resurrect the failed contention that those provisions violated Section 8(a)(1). As before, when sound legal judgment and a good dose of common sense are applied, it becomes apparent that the CAGC's Exceptions should be rejected and the corresponding portions of the ALJ's Decision upheld.

Throughout this brief, references to the Decision of Administrative Law Judge Mark Carissimi ("Decision") will be designated as follows: ALJD (followed by page: line numbers).

The proper title of this document is "American Red Cross Code of Business Ethics and Conduct," AGC Ex. 18, but, consistent with the CAGC's Brief, it will be referred to as the "Code of Conduct."

II. STATEMENT OF FACTS

The relevant background facts are set out in Respondent's Brief in Support of Exceptions and will not be repeated here.

III. ARGUMENT

A. THE CAGC'S EXCEPTIONS REGARDING THE BEST INTEREST OF THE ARC, CONFLICTS OF INTEREST AND UNSATISFACTORY CONDUCT PROVISIONS ARE WITHOUT MERIT

The provisions that the CAGC seeks to revive in her first Exception are set forth in the Region's Employee Handbook (AGC Ex. 8) and Code of Conduct (AGC Ex. 18).

The challenged provisions in the Employee Handbook are part of an extensive section detailing the Region's conduct policies, which provides, in relevant part:

• Actions Prohibited by the Code of Business and Ethics and Conduct. No employee or volunteer shall engage in the following actions:

* * *

h. Contrary to the Best Interest of the Red Cross. Operate or act in any manner that is contrary to the best interest of the American Red Cross.

(AGC Ex. 8, p. 37).

Work Rules

Violation of the work rules may result in discipline which may include termination of employment. Behaviors that constitute an infraction of work rules . . . include the following:

* * *

- Willfully allowing a "conflict of interest," such as financial, personal or otherwise;
- Unsatisfactory conduct;

* * *

(AGC Ex. 8, p. 47).

The separate Code of Conduct policy mirrors the code of conduct section set forth in the Employee Handbook, including, in relevant part:

• Actions Prohibited by the Code of Business and Ethics and Conduct. No employee or volunteer shall engage in the following actions:

* * *

f. Conflict of Interest. Operate or act in a manner that creates a conflict or appears to create a conflict with the interests of the American Red Cross and any organization in which the individual has a personal, business or financial interest. In the event there is a conflict, the American Red Cross has a structured conflict of interest process. First, the individual shall disclose such conflict of interest to the chairman of the board or the chief executive officer of the individual's Red Cross unit or the general counsel of the American Red Cross, as applicable. Next, a decision will be made about the conflict of interest, and, where required, the individual may be required to recuse or absent himself or herself during deliberations, decisions and/or voting in connection with the matter..

* * *

(AGC Ex. 18). Based on the CAGC's first Exception and her supporting brief these are the only provisions of the above policies that remain at issue.³

The CAGC's first Exception continues a clear trend in this matter—the prejudicial lack 3 of clarity in the CAGC's presentation of her case. The first Exception is completely devoid of the specificity required by the Board's Rules and Regulations, including the "specific[] ... questions of procedure, fact, law, or policy to which exception is taken; (ii) ... that part of the administrative law judge's decision to which objection is made; [or] (iii) ... designat[ion] by precise citation of page the portions of the record relied on" 29 C.F.R.. § 102.46(b)(1). Instead, like the consolidated complaint and amendments offered at the hearing, the Exception takes a broad swat and cites to five pages of the Decision without any explanation of how this correlates to her contentions about the Region's conflict of interest and unsatisfactory conduct work rules and policies. As discussed in Respondent's Brief in Support of Exceptions, this approach violates the Region's rights to due process. While the supporting brief provides a little more detail, that cannot be the basis for an Exception. 29 C.F.R. § 102.46(c). More importantly, the Decision's conclusions referred to in the CAGC's brief address only the provisions of the Employee Handbook and Code of Conduct policy set forth supra in this section. Notably, the CAGC lodged no exception regarding any purported oversight in the Decision regarding allegations concerning the Red Cross affiliation and improper

1. THE CAGC'S EXCEPTIONS DID NOT CHALLENGE THE ALJ'S FINDINGS AND CONCLUSIONS WITH RESPECT TO PROVISIONS REGARDING THE BEST INTEREST OF THE AMERICAN RED CROSS

As a preliminary matter, because the CAGC's Exceptions did not properly challenge the ALJ's findings with respect to the "best interest of the ARC" provisions, those issues cannot be reviewed by the NLRB because they have been waived. The CAGC's Exceptions state:

[T]he ALJ erred by failing to reach a Conclusion of Law that Respondent violated Section 8(a)(1) of the Act and to issue an appropriate remedial order with respect [to] Respondent's promulgation and maintenance of Conflict of Interest and Unsatisfactory Conduct work rules and policies.

The CAGC's Exceptions contain no mention of any provisions regarding the "best interest of the ARC". The Board's Rules and Regulations are clear: "[A]ny exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived." 29 C.F.R. § 102.46(b)(2).

The CAGC's failure to specifically plead an exception on this issue cannot be remedied by arguments made in her brief. While the Brief in Support of Exceptions attacks the ALJ's "conclusion that Respondent's rule[] prohibiting conduct contrary to the Respondent's best interest . . . do[es] not violate Section 8(a)(1) as overly broad and unlawful," the Board's Rules and Regulations unequivocally mandate that "[a]ny brief in support of exceptions shall contain no matter not included within the scope of the exceptions" 29 C.F.R.. § 102.46(c).

influence provisions or the code of conduct certification. Accordingly, any allegations regarding those policies are not in issue at this point. See $\S III(A)(1)$, *infra*.

As such, any challenge to the Decision's findings and conclusions with respect to policies addressing the best interest of the ARC has been waived, and the issue is not properly before the Board. ⁴

2. THE DECISION PROPERLY DISMISSED THE ALLEGATIONS OF THE COMPLAINT WITH RESPECT TO THE PROVISIONS REGARDING THE BEST INTEREST OF THE AMERICAN RED CROSS AND CONFLICTS OF INTEREST CONTAINED IN THE EMPLOYEE HANDBOOK AND CODE OF CONDUCT,.

The ALJ's Decision properly concluded:

[T]he Acting General Counsel has not met his burden of showing that the maintenance of the rules and policies regarding conflicts of interest and not acting in the best interest of the Red Cross would reasonably chill employees in the exercise of their Section 7 rights. Accordingly, I find that the Respondent's maintenance of these policies and rules does not violate Section 8(a)(1) of the Act and I shall dismiss these allegations in the complaint.

ALJD 19:22-27. The Decision reached this result after thoughtful consideration of the legitimate business justifications underpinning the challenged provisions ("neutrality is a fundamental principle of the international Red Cross movement"), the context in which the provisions must be read (ARC's Compliance and Ethics Handbook and the Region's long history of positive labor relations), and the foundational principles set forth in *Lafayette Park Hotel*, 326 NLRB 824 (1998), *enf'd mem.*, 203 F.3d 52 (D.C. Cir. 1999). ALJD 16:37 – 19:9. The CAGC Brief attacks the ALJ's analysis by: (i) arguing "[t]here is no record evidence to show that employees are aware of the compliance and ethics handbook;" (ii) questioning the basis of the ALJ's finding

Assuming, *arguendo*, that the ALJ's findings and conclusions with respect to these provisions may properly be reviewed by the Board, note that in the Decision, the best interest provisions are treated in conjunction with policies regarding conflicts of interest. Therefore, this brief addresses them in the same manner for the sake of consistency. However, these are distinct provisions in the Region's policies and, while the same or similar legal principles apply to both, the Region maintains that the validity of each – the provisions regarding the best interest of the ARC and conflicts of interest – should be considered on separately.

that the Region has a long history of positive labor relations and the probative value of that history; and (iii) pointing to NLRB decisions that were distinguished by the ALJ and are of little relevance to the issues here. The CAGC's contentions impermissibly try to shift the burden of proof, ask the Board to ignore undisputed record evidence that establishes the appropriate context for the challenged policies, and rely on inapposite precedent.

a. The American Red Cross Compliance and Ethics Handbook.

The CAGC first tries a slight-of-hand to evade the burden of proof, pointing every which way to "prove" that "[t]here is no record evidence to show that employees are aware of the compliance and ethics handbook." CAGC Brief at pp. 3-4. Then follows a leap of faith -- the audacious claim that "Respondent failed to meet its burden to show that its rules are lawful."

Respondent has no such burden. "It is axiomatic that in any unfair labor practice case, the burden of proof is on the General Counsel, as the moving party, to prove the allegations of the complaint" *Ortronix, Inc.*, 173 NLRB No. 57, at *5 (1968); *Fieldcrest Cannon, Inc.*, 318 NLRB No. 54, at *525 (1998); *Mt. Clemens General Hosp. v. N.L.R.B.*, 328 F.3d 837, 844 (6th Cir. 2003); *N.L.R.B. v. Fluor Daniel, Inc.*, 161 F.3d 953, 965 (6th Cir. 1998). The Decision properly dismissed the best interest of the ARC and conflicts of interest allegations, because the CAGC failed to meet her burden of proof. ALJD 19:22-25.

As to the substantive arguments raised, attempts to minimize the effect of the ARC's Compliance and Ethics Handbook are unavailing. Contrary to the CAGC's arguments, the record shows that this "Handbook" is maintained in the ordinary course of business and is readily available to the Region's employees through "cross.net", the electronic intranet system where Region employees can access all policies and procedures. (Tr. 76:13-23). Any reasonable reading of the conflicts of interest provision in the Region's Code of Conduct is informed by the Compliance and Ethics Handbook, because the Code of Conduct is taken, **verbatim**, from the

handbook. *Compare* AGC Ex. 18 *with* Resp. Ex. 7, pp. 11-13. As the Decision properly observed, the Compliance and Ethics Handbook provides further explanation by way of illustrative examples, which "establish that the Respondent is directing its employees to avoid conflicts of interest involving possible personal or financial gains . . . [and] also cautions employees against acting in competition with the interests of the Respondent." ALJD 17:14 – 18:11. This important context is crucial to any reasonable reading of these provisions.

For these reasons, the CAGC's arguments attempting to shift the burden of proof and blunt the Decision's reliance upon ARC's Compliance and Ethics Handbook fail.

b. The Region's Long History of Positive Labor Relations.

At the outset, the AGC challenges the Decision's crediting of the uncontested testimony of Keith Sherman, the ARC's Vice President of Human Resources and Labor Relations, by attempting to draw inferences from other record evidence. It goes without saying that the NLRB will not overturn the credibility findings of an administrative law judge, absent clear and convincing evidence to the contrary. *Medco Health Solutions of Las Vegas, Inc.*, 357 NLRB No. 25, at *1 n.1 (2001) *enfd.*, 701 F.3d 710 (D.C. Cir. 2012) ("The Board's established policy is not to overrule an administrative law judge's credibility resolution unless the clear and preponderance of all the relevant evidence convinces us that they are incorrect"), *citing Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.*, 188 F.2d 362 (3d Cir. 1951).

The CAGC tries to discount the Region's long history of positive labor relations and questions its relevance to a reasonable employee's reading of the challenged provisions. CACG's Brief at pp. 4-5. In doing so, the CAGC asks the Board to ignore the record evidence and the context in which the Region's employees would understand the policies at issue.

The Decision's finding that the Region enjoys a long history of collective bargaining with the Union is undisputed on the record, as is the reference to the Region's long-standing relationships with organized labor in the community. ALJD 18:13-20. As recognized in the Decision, these facts provide appropriate context for any reading that a reasonable employee of the Region would give to the contested provisions.

Until the filing of the unfair labor practice charge giving rise to this case, neither the Union nor any employee raised any concerns about any of the policies at issue, filing no grievances, making no informal complaint, raising no concern, or asking questions about any of the policies. (Tr. 98:20 – 99:4; 142:12-15; 144:10-16). No issue with the policies has been mentioned at the Labor Management Committee, a contractually-created mechanism specifically set up by the Union and the Region to "provide a forum for employees to bring suggestions and concerns." (Tr. 129:20-24; 141:14 – 142:11). During the most recent round of collective bargaining negotiations completed in 2012, the Union did not raise any issue or make any proposal regarding the policies. (Tr. 98:5-12). Nor has the Union made any proposals or brought forward any complaints about the policies since the new contract went into effect on June 26, 2012, other than filing the instant charge. (Tr. 98:9-19).

Contrary to the CAGC's contention,⁵ all of these undisputed facts are probative, because they go to the state of mind of the Region's employees, *i.e.*, how they would understand the Region's policies. There is nothing in the record to show that the Region's employees would construe the policies as restricting activity protected by Section 7. "In the absence of any evidence that [the employer] is imposing an unreasonably broad interpretation of the rule upon

The CAGC's brief fails to disclose that both of the decisions cited in her argument on this point were reversed by the U.S. Court of Appeals for the D.C. Circuit, albeit on different grounds. See Tenneco Automotive, Inc., 357 NLRB No. 84 (2011), enf. denied on other grounds, 716 F.3d 640 (D.C. Cir. 2013); Windsor Convalescent Center of North Long Beach, 351 NLRB 957 (2007), enf. denied on other grounds, 570 F.3d 354 (D.C. Cir. 2009).

employees, [a] determination to the contrary is unjustified." *Aroonstook County Regional Ophthalmology Center v. N.L.R.B.*, 81 F.3d 209, 212 (D.C. Cir. 1996).

c. The Region Has A Legitimate Business Justification For The Provisions Regarding Its Best Interest And Conflicts of Interest Policies.

The AGC robotically recites NLRB precedents to argue that the Region's policies regarding the best interest of the ARC and conflicts of interest are facially invalid. This superficial approach fails, because the record **evidence** demonstrates that the Region has legitimate business justifications for those provisions. "[T]he NLRB may not cavalierly declare policies to be facially invalid without any supporting evidence, particularly where, as here, there are legitimate business purposes for the rule[s] in question and there is no suggestion that anti-union animus motivated the policy;" there must be evidence in the record "to suggest that any employees believe that the [policies] prohibited union activities." *Adtranz ABB Daimler-Benz Transportation, N.A. v. N.L.R.B.*, 253 F.3d 19, 29 (D.C. Cir. 2001).

Neutrality is a fundamental principle of the Red Cross movement. (Tr. 163:22-25); Resp. Ex. 7 at p. 8. The best interest of the ARC and conflicts of interest provisions are designed to preserve the ARC's neutrality and protect against conflicts of interest with respect to an individual employee's personal investments or possible involvement with competitors, suppliers, or sponsors. (Tr. 77:1-15; 164:11 – 165:22). Other provisions in the Code of Conduct serve similar purposes. *See, e.g.*, (Tr. 163:7-20) (Red Cross Affiliation provision is meant to ensure that no one creates the perception of speaking on behalf of the global Red Cross when it comes to partisan activities); (Tr. 164:1-10) (explaining that the Improper Influence provision is intended to protect against financial or political donations that "could create the appearance of an impropriety or a lack of neutrality in [the organization's] business dealings."). The

uncontroverted intent of these provisions is to ensure that the ARC's practices are viewed by the American public as being, and are in fact, "above board." (Tr. 77:10-15).

The CAGC fails to point to any evidence in the record that "suggest[s] that any employees believe that the [policies] prohibited union activities." Instead, the CAGC returns to NLRB decisions that already have been properly distinguished by the ALJ. ALJD 18:44 – 19:20. For example, both *Costco Wholesale Corp.*, 358 NLRB No. 106 (2012) and *Claremont Resort & Spa*, 344 NLRB 832 (2005) involve rules that broadly restricted employee speech, which is fundamentally different from restrictions on conduct; principles applied to the one cannot be applied to the other when analyzing the reasonable employee standard. The Board "will not require employers to anticipate and catalogue in their work rules every instance in which, [detrimental conduct] might conceivably be protected by (or exempt from the protection of) Section 7." *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 648 (2004).

Finally, the position of the CAGC reflects the cynical view that the interests of an employer organization always must be adverse to those of its employees or the union which represents them. That is one reason why the CAGC's reliance upon cases dealing with rules that "prohibited employees from defaming the company, talking about manages, abusive language and harassment" so badly misses the mark; such specific rules are in no way comparable to business-directed conflicts of interest provisions. As the Decision properly found, the context for the challenged Region policies made plain that they were directed "to avoid conflicts of interest involving possible personal or financial gain . . . [or] acting in competition with the interests of the Respondent." ALJD 18:8-11. Accordingly, the CAGC's exceptions fail.

The Decision does not actually distinguish *Claremont Resort & Spa*, but it does distinguish a similar prohibition on "negative" speech in *Roomstore*, 357 NLRB No. 143 (2011). ALJD 19:13-20.

d. The Contrary to the Best Interest of the Red Cross Provision Is Nothing More Than A Catch-All.

In addition to foregoing, the best interest of the ARC provision is not intended to, nor does it, limit or discourage union or other concerted activity. The involvement of organized labor as sponsors, donors and supporters of the Region's mission is well known and highly publicized. (Tr. 151:18-153:3). Simply put, this policy is a catch-all, "an opportunity to say, look, we've told you what it is we expect of you, don't do anything that's going to hurt us and the role that we play in society." (Tr. 165:23 – 166:2). The provision cannot reasonably be understood as restricting Section 7 activity.

3. THE DECISION PROPERLY DISMISSED THE ALLEGATIONS OF THE COMPLAINT WITH RESPECT TO THE UNSATISFACTORY CONDUCT PROVISION IN THE EMPLOYEE HANDBOOK.

The Decision properly concluded "that a reasonable employee would not read the handbook provision providing for discipline for 'unsatisfactory conduct' to chill Section 7 rights." ALJD 19:46 – 20:2. The CAGC inexplicably challenges this result by arguing that "[t]here is no requirement that employees must be disciplined for violating a bad rule for the rule to violate the statute." CAGC's Brief at p. 7. The Decision imposes no such requirement. While the Decision mentions that there is no evidence of discipline under this provision restraining Section 7 rights, ALJD 19:41-42, its conclusion also is based on more important factors.

The Decision properly held, as required in *Lutheran Heritage Village*, that the wording of work rules must be afforded a degree of leniency. ALJD 19:35-41. The Board there held:

Work rules are necessarily general in nature and are typically drafted by and for laymen, not experts in the field of labor. [The Board] will not require employers to anticipate and catalogue in their work rules every instance in which, [detrimental conduct] might conceivably be protected by (or exempt from the protection of) Section 7.

Lutheran Heritage Village, 343 NLRB at 648.

The Decision also recognized that the potential in this case for discipline for "unsatisfactory conduct" is backstopped by protections in the collective bargaining agreement between the Region and the Union. ALJD 19:43-46 (noting "just cause" required to discharge or suspend an employee and a grievance-arbitration provision). This analysis provides solid footing for the Decision's dismissal of the allegations regarding the "unsatisfactory conduct" work rule. ALJD 20:1.

The CAGC's legal theory on this point remains mystifying. It appears that she may be arguing for a breathtaking expansion of the law, *i.e.*, that a general progressive discipline policy is derivatively unlawful *per se* if it hypothetically could be applied to another employer policy which the CAGC believes to be unlawful. There is no support in NLRB precedent for this unusual theory. Moreover, it flies in the face of the Board's common sense admonitions in *Lutheran Heritage Village, Ibid.*

B. POLICIES REGARDING THE USE OF THE RED CROSS NAME AND EMBLEM CANNOT BE UNLAWFUL BECAUSE THEY ARE CONSISTENT WITH FEDERAL LAW.

The CAGC excepts to the ALJ's alleged failure to "draw appropriate conclusions of law" and find that the Personal Use policy, as maintained in the Region's Employee Handbook and the Code of Conduct, violates Section 8(a)(1). CAGC's Brief at p. 8.7 This challenge is based almost entirely on the theory that this is a separate and distinct issue from failed allegations concerning the ARC's Trademark pamphlet. The CAGC takes this position despite acknowledging that she does not take exception with the ALJ's finding that the ARC's Trademark policy is lawful. *Id.* The CAGC's position is not sustainable.

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The CAGC's Brief relies upon NLRB decisions that were already distinguished by the ALJ. *Compare* CAGC's Brief at p. 9 with ALJD 22:36 – 23:09 (including n.9).

The legal principles and analysis that establish the lawfulness of the Trademark policy equally apply to the Personal Use provisions. The validity of the Trademark policy does not hinge on some "magic" words in that policy, but rather on the plain fact that it is a federal crime to wear or display the Red Cross emblem or insignia or use the words "Red Cross" to fraudulently create the appearance of endorsement by the American Red Cross. 18 U.S.C. § 706. This is not an employment policy. This is the law of the land.

The same law validates the Personal Use policy, which prohibits:

Personal Use. Authorize the use of or use for the benefit or advantage of any person, the name, emblem, endorsement, services or property of the American Red Cross, except in conformance with the American Red Cross policy.

AGC Ex. 8 at p. 36; AGC Ex. 18. The lawfulness of that policy is plain and simple, and the CAGC's challenge frankly is astonishing.⁸

Beyond the clear expression of public policy manifested in the United States criminal code, the Region's prohibitions on the unauthorized use of the Red Cross name and emblem are informed by two other legitimate and nondiscriminatory business justifications. First, the Region's restrictions on the use of the emblem are mandated by Article 44 of the First Geneva Convention of 12 August 1949, as amplified by Protocol I of the 8 June 1997 additions to the Geneva Conventions. AGC Ex. 17. A failure by the Region to properly limit the use of ARC's emblem would contravene regulations imposed upon all constituent national societies of the Red Cross/Red Crescent movement. Second, as a practical matter, the record shows that competitors

The CAGC goes so far as to claim "there is no record evidence of any business or safety concerns Respondent might have regarding the use of its name and emblem." CAGC's Brief at p. 9. Not only does this fly in the face of the undisputed record, as discussed *infra*, but it flat out ignores a federal statute and the Geneva Convention, which unquestionably establish the legitimacy of concerns regarding the use of the Red Cross name and emblem.

"actually make it appear as if they're running a Red Cross blood drive, or ... people that are being called are being solicited on behalf of the Red Cross to come and donate blood." (Tr. 151:13-17). Given the understanding by employees of the Region of the Red Cross's mission and the well-publicized realities of the blood collection "business", no reasonable employee would misapprehend these substantial business-connected reasons for the Region's prohibiting unauthorized use of its name and emblem. ALJD 22:27-34.

To the extent that the CAGC's position is that Region's Personal Use policy unlawfully restricts an employee's ability to use the Red Cross insignia on union buttons or attire for NLRA purposes, the Board has recognized that an employer may limit the use of such paraphernalia if there are special circumstances. Pathmark Stores, Inc., 342 NLRB 378, 379 (2004); Republic Aviation Corp. v. N.L.R.B., 324 U.S. 793 (1945). "Special circumstances' include, inter alia, situations in which display of union insignia could jeopardize safety;" Albis Plastics, 335 NLRB 923, 924 (2001) or lead to customer confusion. Pathmark Stores, 342 NLRB at 379. The Geneva Convention and the record testimony put to rest any contention that these "special circumstances" are not present here. And, it is well established that an employer has the right to shape its public image, so long as it adequately maintains the opportunity to express pro-union sentiment. N.L.R.B. v. Starbucks, 679 F.3d 70, 78 (2d Cir. 2012). The Region's policies in no way limit the ability of its workers to display pro-union support, and the non-discrimination provisions of the collective bargaining agreement between the parties reconfirm that fact. AGC Ex. 14 - Art. 14(A), (B). Rather, the policies clearly were enacted to avoid public confusion regarding the Red Cross emblem, insignia and name, in order to protect public safety and comply with ARC's legal obligations under federal law and international compacts. There is no legitimate basis for the CAGC to claim that they are unlawful.

IV. CONCLUSION

For the foregoing reasons, the Counsel for the Acting General Counsel has failed to show that her Exceptions to the ALJ's Decision are warranted. Accordingly, the Region submits that the Board should accept the uncontested evidence established on record, follow its well-settled precedents and uphold the ALJ's dismissal of the allegations regarding the provisions on the best interest of the ARC, conflicts of interest and unsatisfactory conduct and the provisions regarding the use of the Red Cross name and emblem.

August 16, 2013

Respectfully submitted,

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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN RED CROSS BLOOD SERVICES, WESTERN LAKE ERIE REGION,

Respondent,

Case No. 08-CA-090132

and

CERTIFICATION OF SERVICE

THE UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 75,

Charging Party.

I, Steven W. Suflas, hereby certify and state that on August 16, 2013, I caused a true and correct copy of the foregoing Answering Brief of Respondent, American Red Cross Blood Services, Western Lake Erie Region, in Response to the Exceptions of Counsel for the Acting General Counsel to the Decision of Administrative Law Judge Mark Carissimi to be served via email to the following:

Gina Fraternali, Esquire National Labor Relations Board 1240 East 9th Street, Suite 1695 Cleveland, OH 44199-2086 Gina.Fraternali@nlrb.gov

John M. Roca, Esquire Gallon, Takacs, Boissoneault & Schaffer Co., L.P.A. 3516 Granite Circle Toledo, OH 43617 jroca@gallonlaw.com I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Steven W. Suflas, Esquire

Ballard Spahr LLP

Attorneys for Respondent